

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 12, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09od-064

OAHU

Withdrawal from Governor's Executive Order No. 3867 and
Reset Aside to Department of Agriculture for Agriculture
Purposes, Kahuku, Koolauloa, Oahu, Tax Map Key: (1) 5-6-
005:018 and 5-6-006:056.

CONTROLLING AGENCY (of subject executive order):

Department of Agriculture

APPLICANT (requesting set aside):

Department of Agriculture

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kahuku, Koolauloa, Oahu,
identified by Tax Map Key: (1) 5-6-005:018 and 5-6-006:056, as
shown on the attached map labeled Exhibit A1 and A2.

AREA:

(1) 5-6-005:018	226.123 acres	Lot 1164-A
(1) 5-6-006:056	3.537 acres	Lot 1163-B

ZONING:

State Land Use District: Agriculture
City & County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Acquired after Statehood, i.e. non-ceded.

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Governor's Executive Order No. 3867 setting aside 685.798 acres to Department of Agriculture for Kahuku Agricultural Park purposes.

PURPOSE OF SET ASIDE:

Agriculture Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

None

REMARKS:

The subject parcels, (1) 5-6-005:018 and (1) 5-6-006:056 are portions of Governor's Executive Order No. 3867 under the management jurisdiction of the Department of Agriculture (DOA) for Kahuku Agricultural Park purposes.

On February 24, 2009, the Board of Agriculture approved its staff recommendation to request the Governor to withdraw the subject area from EO 3867 and reset aside to DOA for agriculture purposes. A copy of the February 2009 approval is attached as Exhibit B.

The proposed action will allow the current DOA's lessee, i.e. the Kahuku Farmers Association, to develop the area into an agricultural tourism program which is permissible under DOA's normal agriculture program.

Staff did not solicit comments from other government agencies as the request is for housekeeping purposes only. There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order withdrawing 229.66 acres from the Governor's Executive Order No. 3867 and subject to the following:


- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Agriculture under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



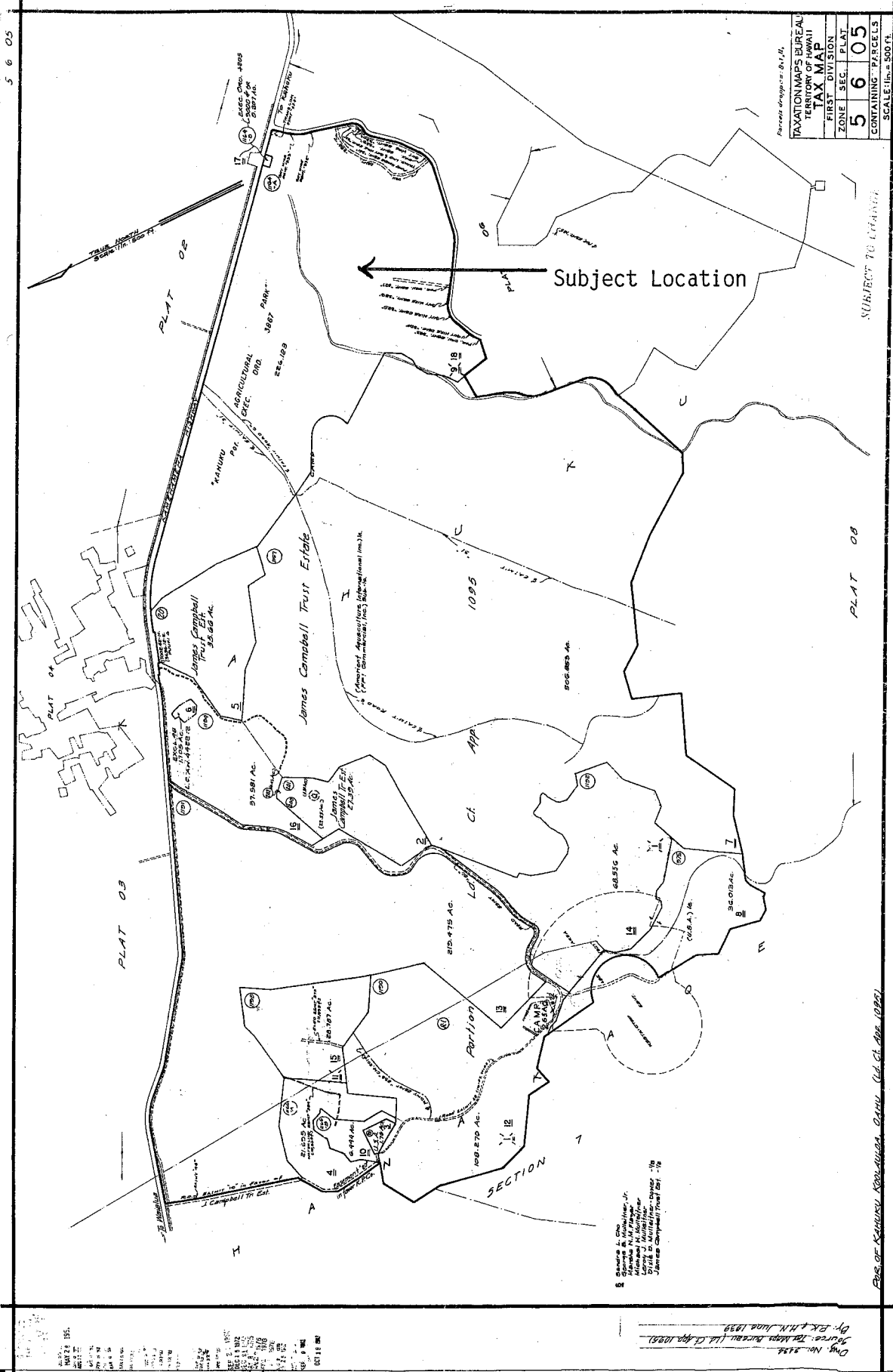
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

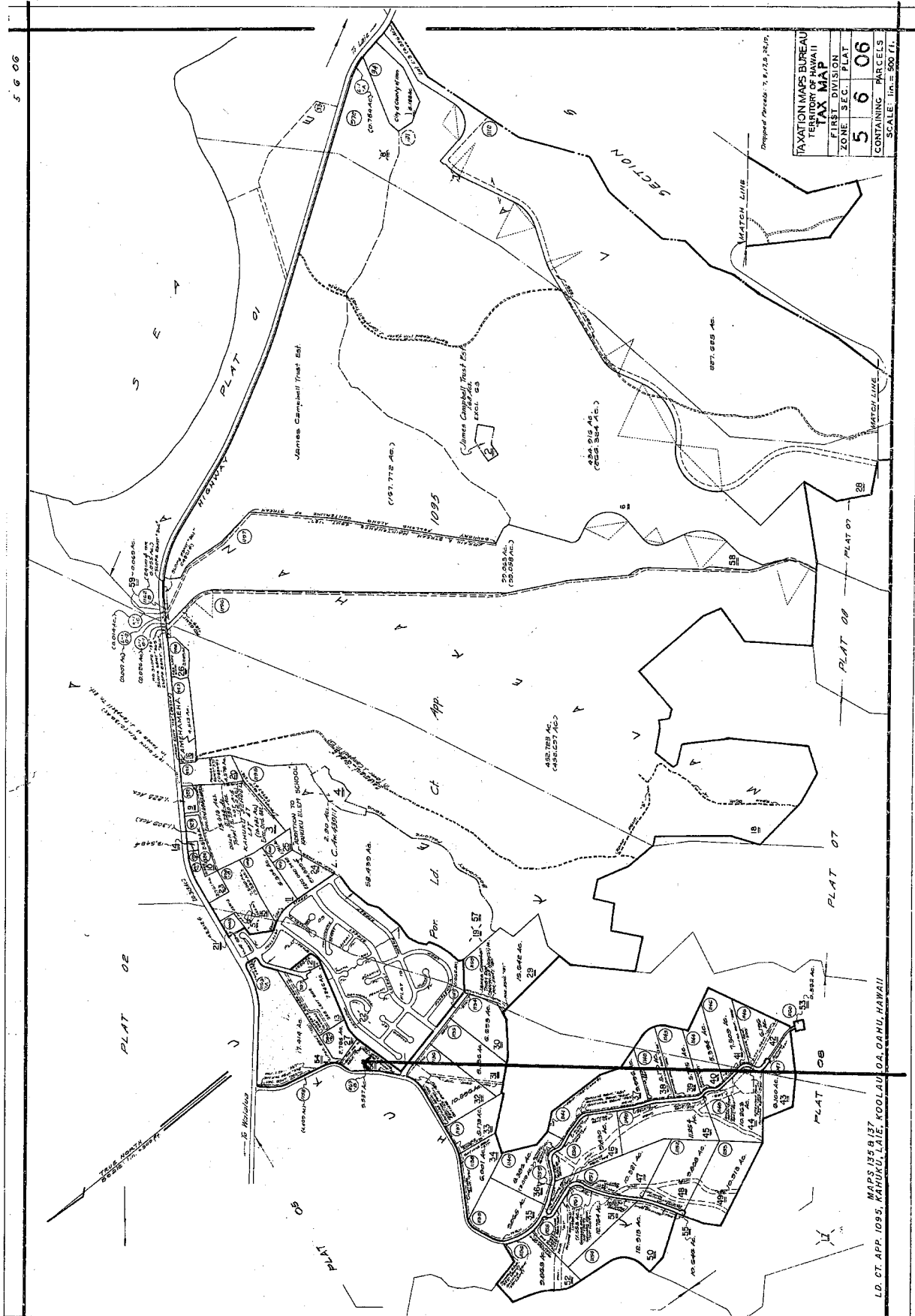


Laura H. Thielen, Chairperson





5 6 06



TAXATION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
ZONE	5 6 06
SEC.	01
PLAT	01
CONTAINING PARCELS	
SCALE: 1 in. = 500 ft.	

Subject Location

MAPS 105-107
L.D. CT. APP. 1095, KAHUKU, LAIE, KOOLAUPUA, OAHU, HAWAII

By: P.K. H.M. Aug. 1939
Source: Tax Maps Bureau (L.D. App. 1095)

EXHIBIT "A2"

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII 96814

February 24, 2009

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO WITHDRAW LOT NO. 25
COVERED BY GENERAL LEASE NO. S-6000 FROM THE
KAHUKU AGRICULTURAL PARK AND FOR RE-SET ASIDE
TO THE NON-AGRICULTURAL PARK LANDS PROGRAM

Authority: Section 4-158-13(a)(3), Hawaii Administrative Rules

Land Area: 226.123 acres and 3.537 acres, respectively

Tax Map Key: 1st Division: 5-6-006:018 and 056

Lease Term: 45 years, November 1, 1997 to October 31, 2042

Rent: \$24,109.80 per year

BACKGROUND:

Kahuku Farmers Association ("KFA") has occupied the present premises since 1971 when sugar production ceased. KFA has occupied the premises under various arrangements, including a lease with Campbell Estate, a sublease with the State Department of Land and Natural Resources, and a Revocable Permit, which was converted to a long-term lease pursuant to Act 88, SLH 1996. KFA presently is the lessee under General Lease No. S-6000 from the Department of Agriculture.

The Lessee, recognizing the current trend in diversified agriculture, desires to maintain their local market presence by developing an agriculture tourism program to meet current and future needs. The Lessee proposes to construct a one-story retail building on the premises to conduct tours, present educational information and for the retail sale of fruits, vegetables and commodities, including value-added products, that are grown, cultivated, harvested and/or processed on the premises.

A1

EXHIBIT "B"

The Agricultural Park Program already contains provisions for regulated retail activity, which is consistent with the purpose and operation of ag parks. The primary purpose of the ag park program is to provide manageable sized lots for new farmers, displaced farmers, and other qualified farmers to farm and produce agricultural and aquacultural commodities that will contribute to the State's economy. The State ag park program is intended to be an "incubator" for new and displaced farmers to establish and operate diversified agricultural operations and encourages farmers to share resources, expertise, community values, and create purchasing power through bulk purchasing. It tries to provide the necessary infrastructure and utilities to allow the farmer to successfully develop a new agricultural enterprise.

The recently implemented Non-Agricultural Park Lands Program, on the other hand, is well suited to accommodate a lessee's desire to supplement its farm income with ag tourism activity which includes educating its visitors with "hands-on" experiences in the business of producing a variety of commodities that consumers have become familiar with. The lands within the Non-Ag Park program are generally not contiguous and are larger so as to provide sufficient area to conduct such ag tourism activities.

ARMD staff and Lessee has held numerous discussions over the past 24 months and have developed a Letter of Intent, attached as Exhibit "A" hereto, that identifies the process by which the current lease will be converted to a Non-Ag Park lease, and contains the mutually agreed upon terms, conditions, and allowable ag tourism activities and products for sale to be incorporated into a new Non-Agricultural Park Lands lease.

CONCLUSIONS:

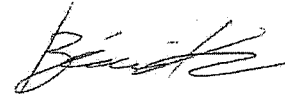
1. The Lessee desires to maintain their local market presence by developing an agricultural tourism program to maintain current and future needs.
2. The construction of a one-story building to market, display and sell fruits, vegetables, and commodities grown, cultivated, harvested, and/or processed on the premises would further the Lessee's desire to develop an ag tourism program to supplement its farm income and operations.
3. The Lessee is current in its terms and conditions of General Lease No. S-6000.

RECOMMENDATION:

That the Board of Agriculture approve staff's request to withdraw Lot 25 from the Kahuku Agricultural Park and request the Department of Land and Natural Resources to request the Governor's approval to re-set aside the subject parcel to the Non-Agricultural Park Lands Program and also approve Lessee's request to construct a one-story building on Lot No. 25, pursuant to the terms and conditions of General Lease No. S-6000, Chapter 4-158, Hawaii Administrative Rules, and further subject to the following additional condition:

1. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage, personal injury, or wrongful death, arising out of Lessee's construction, installation, and use of said improvements and appurtenances, including the claims of any guests or business invitees.


Respectfully submitted,



BRIAN KAU, P.E.
Administrator & Chief Engineer
Agricultural Resource Management
Division

Attachment

APPROVED FOR SUBMISSION



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

Approved by the Board of
Agriculture at its meeting held on

2/24/09
at TV A-1

LINDA LINGLE
Governor



EXHIBIT "A"

DRAFT

A4
SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

February 11, 2009

Mr. Clyde O. Fukuyama and
Mr. Melvin Matsuda
Kahuku Farmers Association
P. O. Box 36
Kahuku, Hawaii 96731

Dear Messrs. Fukuyama and Matsuda:

Subject: Letter of Intent and Mutual Agreements

Per our previous discussions, as we are awaiting the State's Survey Division's response on the land description, we can proceed to execute a Letter of Intent and Mutual Agreements reflecting some of the terms and conditions of the anticipated lease upon transfer from the Agricultural Park to Non-Agricultural Park Lands program.

Below are some of the terms and conditions we mutually agree upon:

1. TERM: 45 years
2. AREA: ±229.66 acres
3. RENT: To be determined by independent appraisal.
4. REOPENING: First 10 years, fixed; rental reopened for year 11-20; year 21-30; year 31-40; and year 41-45.
5. ADDITIONAL RENTAL: To be determined by independent appraisal.
6. PERFORMANCE BOND: Waived.
7. INSURANCE: Per lease provisions; Comprehensive General Liability and Fire on improvements.
8. CHARACTER OF USE: Diversified Agriculture; see Special Conditions
9. SPECIAL CONDITIONS: Lessee shall be allowed to conduct agricultural activities, as defined in §4-158-2, HAR and including approved activities as shown in the Special Conditions below, provided that the activity shall be accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations.
 - a. Lessee shall be permitted to conduct activities within a designated area of the subject premises to include:
 - Farm Tours; guided or self-guided;
 - Visitor harvests;
 - Processing, marketing and displaying of agricultural crops or commodities, which may include any product created through



DRAFT

Messrs. Fukuyama and Matsuda
February 11, 2009
Page 2

value-added processes. The lessee shall sell to the general public provided that the operations shall be owned and operated by the lessee in good standing with the department. (see §4-158-19(b), HAR); and

- Other activities as approved by the Lessor.

b. Prohibited activities shall include, but not limited to:

- ATV rides or tours;
- Bike rides or tours; motorized or not motorized;
- Horseback riding;
- Processing, marketing, displaying, or sales of agricultural crops or commodities not in compliance with §4-158-19(b), HAR;
- Farm stays or Bed and Breakfast operations;
- Farmer's Markets; and
- Other activities not specifically approved by the Lessor.

10. PRODUCTS

FOR SALE:

Product listing submitted by Ms. Kylie Matsuda, via e-mail attachment dated August 18, 2008, attached as Exhibit "A" hereto, shall represent a sampling of potential value-added products and refreshments provided that any value-added product shall be in compliance with the provisions of §4-158-19(b), HAR.

Finally, this Letter of Intent and Mutual Agreement shall represent the understanding and agreement by all members of the Kahuku Farmers Association and shall become binding upon its full execution.

The Department of Agriculture and Kahuku Farmers Association hereby mutually agree upon the terms and conditions presented above as the basis for the drafting of a new general lease covering approximately 229.66 acres, situated at Kahuku, Koolauloa, Oahu, Hawaii.

Attachment

AGREED AND ACCEPTED:

KAHUKU FARMERS ASSOCIATION

Clyde O. Fukuyama

Melvin Matsuda

Herbert Antoku

Clarita Nozawa

AGREED AND ACCEPTED:

DEPARTMENT OF AGRICULTURE

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

AS

AG

Kahuku Farms Country Store

These lists are created with the intention of using as much produce and ingredients from the farm as possible. Each item features ingredients that we currently grow or are in the processing of growing for future products.

Value-Added Products

Mango Jam
Lilikoi Jelly
Dehydrated Apple Bananas
Mango Tea
Mango Scone Mix
Mango Papaya Soap
Honey
Trail Mix
Lilikoi Butter
Lilikoi Balsamic Vinaigrette
Chutney
Meat Marinade featuring papaya as a tenderizer
Lemon Verbena-Future Products

Refreshments

Mango, Papaya, Banana, Lilikoi Smoothies
Mango, Papaya, Lilikoi Sorbet
Salads
Papaya Half with a scoop of Sorbet
Papaya Half filled with fresh fruit
Fruit Cups-Papaya, Banana, Mango, Sugar Cane, Coconut, Pineapple
Mango Iced Tea, Mango Hot Tea
Banana Bread
Lau Lau Plates
Roasted Corn
Crossant, Banana, Nutella
Banana, Granola, Smoothie
Corn Chowder
Taro Bread
Vanilla Products-Future
Stevia Products-Future
Cocoa Products-Future

EXHIBIT "A"